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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,969	04/25/2001	Larry N. McMahan	10010480-1	1256

7590 04/29/2005

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
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EXAMINER	
REFAI, RAMSEY	

ART UNIT	PAPER NUMBER
2154	

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/842,969	Applicant(s) MCMAHAN ET AL.	
	Examiner Ramsey Refai	Art Unit 2154	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *None*.

   Claim(s) objected to: *None*.

   Claim(s) rejected: *1-3 and 5-31*.

   Claim(s) withdrawn from consideration: *None*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet..
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Continuation of 11.

1. Applicant's arguments filed on April 14, 2005 have been fully considered but they are not persuasive, therefore the 35 U.S.C. 103 (a) rejections are sustained over the cited proir arts: Emens et al (US Patent No. 6,606,643), Sun et al (US Patent No. 6,732,264), and Zadikan et al (US Patent No. 6,724,757). The Examiner's remarks are below.

2. Applicant is arguing that there is no suggestion to combine Emens and Sun. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Emens shows the use of allocating resources but fails to show the use of firmware, which contains data regarding distance of resources. However, Sun et al shows the use of firmware that includes program code know as BIOS, which contains boot code used when the system is reset or powered on. BIOS boot code also contains hardware configuration and resources tables that contain lists of resources (column 1, lines 20-60 and column 2, lines 10-44). It would have been obvious to one of the ordinary skill in the art at the time of the applicant's invention to combine the teachings of Emens et al and Sun et al because Sun et al's use of firmware and providing an operating system with data from firmware in Emens et al's method would decrease the processing time of an information request sent by a client by allowing the client computer to obtain a previously stored list of the nearest server upon startup from firmware without the need to re-query each server among the mirror servers to locate the nearest server.

3. Applicant is arguing that Emens does not teach "the first resource and the second resource are allocated to be assigned to a prgoram". Examiner respectfully disagrees. Emens shows the first resource and the second resource are allocated to be assigned to a program (column 7, lines 35-67 and column3, lines 28-37). The first resource being resources on the client computer and the second resource is memory located on the optimum mirror server (Figure 2) using program modules, browser application interface, and distribution/calibration managers (column 7, lines 35-67).

4. Applicant is arguing that Sun does not teach or make obvious that the system firmware stores the claimed distance between the computer resources and that "upon power-up, an operating system is provided, from the firmware, with the distance between the computer resources for use in allocating the first resource and the second resource". Examiner respectfully disagrees because Sun shows the use of firmware that includes BIOS program which can contain hardware configuration and resource tables that contain lists of resources (column 1, lines 20-60 and column 2, lines 10-44). It would have been obvious to one of the ordinary skill in the art at the time of the applicant's invention to combine the teachings of Emens et al and Sun et al because Sun et al's use of firmware and providing an operating system with data from firmware in Emens et al's method would decrease the processing time of an information request sent by a client by allowing the client computer to obtain a previously stored list of the nearest server upon startup from firmware without the need to re-query each server among the mirror servers to locate the nearest server.

5. Applicant is arguing that Emens does not teach a plurality of distances including distances between a plurality of first-type resources to a plurality of second-type resources. Examiner respectfully disagrees because Emens teaches an address list is maintained which lists the optimum servers based on response. The first resource is on the client computer and the second is on the mirror server (abstract, Figure 4, element 36 and column 7, lines 57-62). Multiple clients can include multiple resources located on each client (column 11, lines 55-60).